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Subj.
1952
Security Information

20 November 1952

Assistant Director/Personnel

Office of General Counsel

Home Leave

REFERENCE: Your memorandum of 3 November 1952

1. Your memorandum submits the case of certain overseas employees of the State Department "transferring in the field" to CIA. You point out that in the majority of cases such persons have "received lump sum payment for their accrued annual leave."

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2. Your memorandum contains several questions involving interpretations of P. L. 110. Some of these we have taken the liberty of reshaping in order to make certain throughout the present discussion that the distinction between the two statutory requirements of "two years' continuous service abroad" on the one hand and "accrued annual leave" on the other, is preserved. We think this essential.

3. Question 1: May service in the Department of State be counted toward satisfaction of the requirement

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we consider it the plain intent of the language of the statute on Government service, in whatever department or agency that service is rendered, may be counted in this connection. The only requirement, as we see it, is that such service be for an uninterrupted period of two years. The Comptroller General's office, we are informally advised, is of the same view although no official ruling has issued on the subject.

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4. Question 2: Is it permissible to take into account, towards fulfillment of thirty days' annual leave proviso, annual leave earned in the State Department by a transferee to CIA in his service with State was officially terminated before he entered on duty with CIA and he has received lump sum payment from State for his accrued annual leave? We think not. The statute prohibits it. A former employee of the State Department who has received lump sum payment for his annual leave accrued while he was with State cannot properly be said to have any annual leave whatsoever standing "to his credit." Any such credit and the reciprocal debt of the Government, have

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been extinguished. The fact he has been employed by CIA changes the case not at all except, of course, to the extent that such new employment itself causes accrual of annual leave and represents a new start towards accumulation of the necessary credit of thirty days' leave.

5. Relief for some of the transferees in question may be found in 5 USCA § 61 (b). This is the section of the statute which directs payment to an employee separating from Government service of a lump sum for his accumulated leave. The same section requires that:

" . . . if such employee is reemployed in the Federal service or in or under the Government of the District of Columbia under the same leave system prior to the expiration of the period covered by such leave payment, he shall refund to the employing agency an amount equal to the compensation covering the period between the date of reemployment and the expiration of such leave period and the amount of leave represented by such refund shall be credited to him in the employing agency."

To be read with subsection 61 (b) is subsection 61 (d) as follows:

"All accumulated and current accrued leave shall be liquidated by a lump-sum payment to any civilian officer or employee of the Federal Government or the government of the District of Columbia in cases involving transfer to agencies under different leave systems. Such lump-sum payment shall equal the compensation that such employee would have received had he not been transferred until the expiration of the period of such leave . . ."

Although there is no official pronouncement on the subject we have been advised informally by the office of the General Counsel of the Comptroller General that one of the effects of the Annual and Sick Leave Act of 1951, (46 Stat. 472 5 USC § 707) was to place CIA and State for the first time under the same leave system. This Act became effective January 6, 1952. It will be noted that the requirement of refund of lump payment made for accrued annual leave contained in 5 USCA § 61 (b) is conditioned upon the old and new employing agencies being "under the same leave system," that sub-section 61 (d) makes clear there is no intention that any refund be required of a government employee upon his transfer to an agency which is under a leave system differing from that of his former agency.

Accordingly persons who transferred from State to CIA before January 6, 1952 would be under no duty to refund the lump sum paid to them for accumulated leave nor could they become entitled to recredit of leave by making such refund. On the other hand, employees transferred January 6, 1952 and thereafter would clearly be under a duty to refund the lump sum payment received, the agency itself would be bound to collect it and upon

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collection to make the proper credit of leave. The result, as far as the latter type of State-CIA transferee would be concerned would be to dispose of any question of a break in continuous service and such employee would then have restored to him the leave credit which he might need to bring himself within the other of the two home leave requirements. It seems hardly necessary to add in this connection that if in any such case there is any lapse of time whatsoever between the expiration of the leave period for which lump sum payment has been made and employment by CIA, a break in service and a loss of leave credit must be said to have occurred which can no longer be cured by refund of leave payment. A so-called transferee from State who has suffered an interruption of Government service is in no better position in respect to home leave than a person coming to CIA without prior Government service.

6. Question 3: [REDACTED] 25X1A preclude administrative approval of home leave for a period of less than thirty days, home leave without pay or advanced annual leave" when the two requirements of two years' continuous service abroad and thirty days' credit of annual leave "are not fully met?"

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We think the answer must be that unless both requirements are met no home leave at all may be granted, not for a period less than thirty days, not on the basis of leave without pay and certainly not on the strength of advanced annual leave. No other position can be taken squaring with the plain language of the statute.

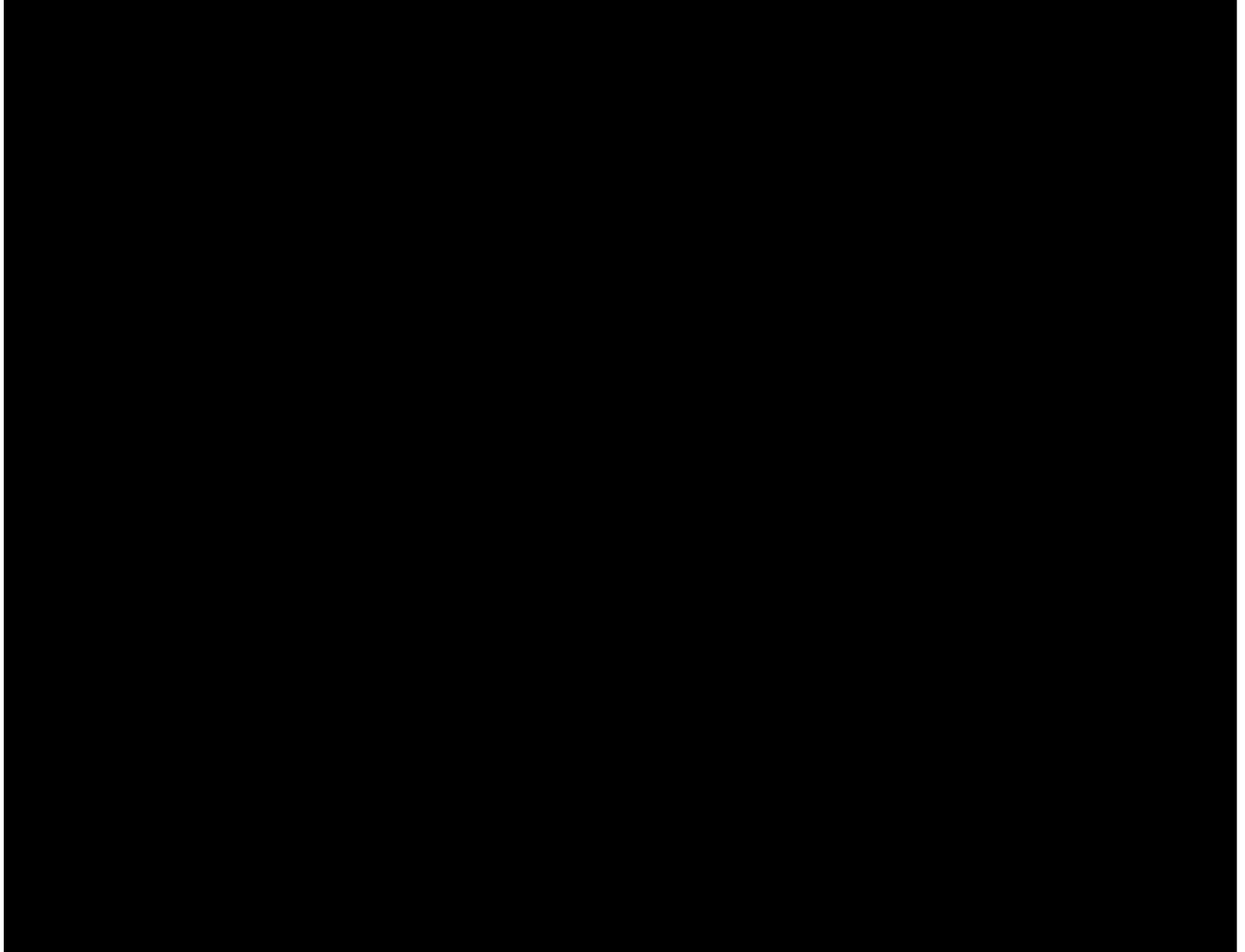
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7. Question 4: You ask what is the "restrictive effect" of these [REDACTED] in the event the two requirements under discussion are not both satisfied in a given case. You ask whether these provisions of the law and regulations forbid payment by the Government of transportation charges connected with home leave unless the two stated requirements are met. The answers to these questions have already been suggested. Properly understood, the privilege of home leave as far as CIA employees is concerned, is but the privilege of traveling home and back to an overseas post at Government expense. The leave consumed in connection with "home leave" is leave already to the employee's credit for whatever purpose he may desire to make of it. If he qualifies in the matter of accumulated leave he is entitled to have the government pay for the expense of his returning home for a vacation. If he does not qualify he is not entitled to such privilege.

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